IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

Bail Appl..No. 4304 of 2007()

CRLMC.886/2007 of DISTRICT COURT, THALASSERY
C.R.NO.16/06 OF PERAVOOR EXCISE RANGE

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: PETITIONER/2ND ACCUSED

E.J.ROY, S/O KUNHUKUNHU,
AGED 27 YEARS, C/O CHANDRAN,
PULINTHANATH HOUSE, POTTOR P.O.,
KOLAZHI, THRISSUR DISTRICT.

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENTS: COMPLAINANT

STATE - EXCISE RANGE OFFICER,
PERAVOOR EXCISE RANGE, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 16/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.4304 of 2007

Dated this the 16th day of July, 2007

ORDER

Application for anticipatory bail. The petitioner along with two co-accused was allegedly involved in the illicit activity of distillation of liquor. The alleged incident took place on 23.08.06. When the excise party reached the scene, the petitioner along with the 3rd accused allegedly took to his heels and could not be apprehended. The 1st accused was arrested. The seizure mahazar and the occurrence report show the presence and involvement of the petitioner. The petitioner could not be arrested. The co-accused have already been arrested and enlarged on bail. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He has been unnecessarily arrayed as an accused. The 1st accused had furnished false and incorrect information to the police implicating the petitioner in an attempt to save his real associates. The petitioner's mother is seriously ill. She is paralysed. In these circumstances, anticipatory bail may be granted to the petitioner, it is submitted.

3. The learned Public Prosecutor on instructions submits that the investigation is already complete. Final report has already been filed. The petitioner need only appear before the learned

Magistrate and seek bail now. There are no circumstances justifying the invocation of the jurisdiction under Section 438 Cr.P.C.

4. In the facts and circumstances of the case, I find merit in the opposition by the learned Public Prosecutor. This, I am satisfied, is a fit case where the petitioner must appear before the Investigating Officer or the learned Magistrate and then seek regular bail. The final report having already been filed, the petitioner can certainly appear before the learned Magistrate and seek bail. I have no reason to assume that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously.

5. The submission that the petitioner has been falsely implicated by the 1st accused and that the petitioner is entitled to anticipatory bail because of the illness of his mother do not at all find favour with me in the facts and circumstances of this case.

6. This bail application is, in these circumstances, dismissed. Needless to say, if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-